



Global Initiative to  
**End All Corporal Punishment  
of Children**

## **MALTA – COUNTRY REPORT**

### **Summary of necessary legal reform to achieve full prohibition**

#### ***Settings where explicit prohibition is necessary***

home, schools, penal institutions, alternative care settings

#### ***Is there a legal defence for corporal punishment which must be repealed?***

Yes – “Reasonable chastisement” is permitted in common law and reflected in articles 229 and 339 of the Criminal Code and article 154 of the Civil Code. The common law defence must be explicitly repealed and these legal provisions amended/repealed accordingly. The near universal acceptance of corporal punishment in childrearing necessitates clarity in law that no level of corporal punishment is acceptable. Explicit prohibition should be enacted of all corporal punishment and other cruel or degrading forms of punishment, in the home and all other settings where adults have authority over children.

#### ***Other legislative measures necessary***

*Schools* – Explicit prohibition should be enacted of corporal punishment in all schools, public and private, in addition to the repeal of the common law defence of “reasonable chastisement”.

*Penal institutions* – Legislation should explicitly prohibit corporal punishment as a disciplinary measure in all institutions accommodating children in conflict with the law.

*Alternative care* – Explicit prohibition of corporal punishment should be enacted in relation to all alternative care settings, including public and private day care, residential institutions, foster care, etc, in addition to the repeal of the common law defence of “reasonable chastisement”.

# DETAILED COUNTRY REPORT

## Legality of corporal punishment

### Home

Corporal punishment is lawful in the home. In response to recommendations made during the Universal Periodic Review in 2009, the Government stated corporal punishment is not permitted under Maltese law.<sup>1</sup> However, “reasonable chastisement” is permitted in common law. The Criminal Code (1854) states that “lawful correction” is not a permissible defence for wilful homicide (article 229) and makes it an offence for a person who “being authorized to correct any other person, exceeds the bounds of moderation” (article 339). Article 154 of the Civil Code (1870) states that a parent may be deprived of the rights of parental authority “if the parent, exceeding the bounds of reasonable chastisement, ill-treats the child, or neglects his education”. Provisions against violence and abuse in the Criminal Code and the Domestic Violence Act (2006) are not interpreted as prohibiting corporal punishment in childrearing.

### Schools

Corporal punishment is considered unlawful in schools, but there is no explicit prohibition. Article 62 of the Education Act (1988, as amended 2006) covers good behaviour and discipline in schools and makes no provision for corporal punishment, but does not explicitly prohibit it. There is no explicit prohibition of corporal punishment in the Teachers (Code of Behaviours) Regulations (1988).

### Penal system

Corporal punishment is unlawful as a **sentence for crime**. It is not available as a sentence under the Criminal Code and the Children and Young Persons (Care Orders) Act (1980).

Corporal punishment is reportedly unlawful as a **disciplinary measure** in penal institutions, but we have been unable to identify prohibiting legislation.

### Alternative care

Corporal punishment is lawful in alternative care settings under the common law defence of “reasonable chastisement”. Residential institutions are governed by the Children and Young Persons (Care Orders) Regulations (1985), which do not prohibit corporal punishment.

## Prevalence research

None identified.

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<sup>1</sup> 16 September 2009, A/HRC/12/7/Add.1/Rev.1, *Report of the Working Group on the Universal Periodic Review: Malta, Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*

## **Recommendations by human rights treaty bodies**

### *Committee on the Rights of the Child*

(28 June 2000, CRC/C/15/Add.129, Concluding observations on initial report, paras. 29 and 30)

“While the Committee takes note that the use of corporal punishment in schools has been prohibited and that the draft Children Act includes a prohibition on physical punishment, it remains concerned that corporal punishment and ‘reasonable chastisement’ in the home is not legally banned.

“The Committee recommends that the State party take all effective measures, including legal ones, to include an explicit prohibition on the use of corporal punishment in the home; to ensure that this prohibition is adequately monitored and enforced, both at home and in the schools; and to promote positive, non-violent forms of discipline as an alternative to corporal punishment in the home.”

### *Committee on Economic, Social and Cultural Rights*

(26 November 2004, E/C.1/1/Add.101, Concluding observations on initial report, paras. 22 and 40)

“While corporal punishment is prohibited in schools and other institutions, the Committee notes that corporal punishment within the family, in the form of ‘reasonable chastisement’, is not prohibited by law.

“The Committee encourages the State party to consider an explicit prohibition on corporal punishment within the family.”

### *European Committee of Social Rights*

(March 2005, Conclusions XVII-2)

“The Committee notes that the report provides no information on corporal punishment of children. It notes from another source that the use of corporal punishment in schools has been prohibited and that the draft Children Act includes a prohibition on physical punishment. The Committee asks whether legislation prohibits corporal punishment of children in other institutions. The Committee notes that corporal punishment and ‘reasonable chastisement’ in the home is not legally prohibited.

“The Committee recalls that Article 17 requires a prohibition in legislation against any form of violence against children, whether at school, in other institutions, in their home or elsewhere. It considers that this prohibition must be combined with adequate sanctions in penal or civil law. Therefore, it considers that since there is no prohibition in legislation of corporal punishment in the home, the situation in Malta is not in conformity with Article 17 of the Charter.

...

“The Committee concludes that the situation in Malta is not in conformity with Article 17 of the Charter on the grounds that:

- corporal punishment in the home is not prohibited....”

### *European Committee of Social Rights*

(1 June 2001, Addendum to Conclusions XV-2, pages 125-127)

“The Committee asks whether legislation prohibits all forms of corporal punishment of children, in the home, in schools, in institutions, and elsewhere....”

## **Universal Periodic Review**

Malta was examined under the Universal Periodic Review process in 2009. The Government rejected recommendations to prohibit corporal punishment of children.

*Report prepared by the Global Initiative to End All Corporal Punishment of Children*  
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*January 2011*